

1 UNITED STATES OF AMERICA  
2 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
3 Washington, D.C.

4 TARLTON AND SON, INC.  
5 and  
6 ROBERT MUNOZ, an Individual

Cases 32-CA-119054  
32-CA-126896

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11 **RESPONDENT TARLTON AND SON, INC.'S OPPOSITION TO MOTION TO**  
12 **FILE AMICUS CURIAE BRIEF**

13 Respondent Tarlton and Son, Inc. ("Tarlton") files this response in opposition to  
14 the Motion of American Federation of Labor and Congress of Industrial Organization for  
15 Leave to File Brief as Amicus Curiae in Support of Charging Party. The motion for leave  
16 to file an amicus brief should be denied.

17 There are no Board rules regarding motions to participate as Amici in Board  
18 proceedings. However, the Board has previously held that leave to participate as amicus  
19 curiae should be denied where the amici position is already adequately presented by the  
20 parties to the proceeding. See, e.g., Ethan Allen, Inc., 231 NLRB 132, 135, n. 4 (1977),  
21 enfd., 596 F.2d 936 (10th Cir. 1979) ("[w]e deny Respondent's motion to remand motion  
22 for oral argument and permission to file *amicus* briefs as the record and briefs adequately  
23 present the position of the parties"); Quick Shop Markets, 204 NLRB 1150, 1153 n. 3,  
24 enfd., 492 F.2d 1248 (8th Cir. 1974), cert. denied 419 U.S. 1031 (1974) ("[T]he  
25 Respondent's request for oral argument and for permission to file *amicus* briefs is hereby  
26 denied, as, in our opinion, the record ... adequately present[s] the issues herein and the  
27 position of the parties"); Allied Chemical Corp., 165 NLRB 235 n. 3 (1967) (leave to file  
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1 amicus brief denied, finding the record, “including the Employer’s brief, adequately sets  
2 forth the issues and positions of the parties.”).

3 Under applicable Board law, the present motion of the AFL-CIO should be denied  
4 because the Charging Party is represented by labor attorneys with extensive experience in  
5 proceedings before the Board. See <http://www.unioncounsel.net/about/>. Additionally,  
6 the Charging Party’s attorneys have more than adequately presented the issues in this  
7 matter, both before the Board and in proceedings before the Ninth Circuit Court of  
8 Appeals. Moreover, proposed amici merely rehash arguments made by the Charging  
9 Party’s counsel in this proceeding and to the United States Supreme Court in Epic  
10 Systems Corp. v. Lewis, 138 S.Ct. 1612 (2018). In fact, proposed amici have failed to  
11 articulate how the Board would benefit from the proposed amicus curiae brief and, as a  
12 result, their request should be denied.

13 Denying proposed amici’s motion would also be consistent with Federal case law  
14 and the Federal Rules of Civil Procedure:

15 An *amicus* brief should normally be allowed when a party is not represented  
16 competently or is not represented at all, when the *amicus* has an interest in some  
17 other case that may be affected by the decision in the present case (though not  
18 enough affected to entitle the *amicus* to intervene and become a party in the present  
19 case), or when the *amicus* has unique information or perspective that can help the  
20 court beyond the help that the lawyers for the parties are able to provide.

21 Otherwise, leave to file an *amicus curiae* brief should be denied.

22 Jin v. Ministry of State Security, 557 F.Supp.2d 131, 137 (D.D.C. 2008) (quoting Ryan v.  
23 Commodity Futures Trading Commission, 125 F.3d 1062, 1064 (7th Cir. 1997))  
24 (emphasis added).

25 Here, as noted above, proposed amici have not indicated any other cases in which  
26 they have an interest that could be affected by a decision in this proceeding. Additionally,  
27 there is no reason to believe that proposed amici is better able to present the issues and  
28 authorities and how applicable authorities apply in this case than experienced labor

1 counsel for the Charging Party. Neither has proposed amici set forth any unique  
2 information or perspective that would be helpful to the Board in this proceeding. See,  
3 e.g., Woodfin Suite Hotels, LLC v. City of Emeryville, 2007 WL 81911, at \*3 (N.D. Cal.  
4 Jan. 8, 2007)(“[a]n entity ‘seeking to appear as *amicus* must ... make a showing that [its]  
5 participation is useful of otherwise desirable to the court.’”) (quoting In re Roxford Foods  
6 Litigation, 790 F.Supp. 987, 997 (E.D.Cal.1991), quoting, in turn, United States v.  
7 Louisiana, 751 F.Supp. 608, 620 (E.D.La.1990)). Here, proposed amici cannot show how  
8 its participation is useful to the Board in this proceeding.

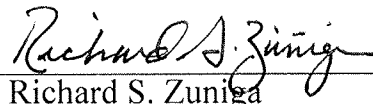
9 For the foregoing reasons, Respondent Tarlton and Son, Inc. requests that the  
10 Board deny the motion to file amicus curiae brief be denied.  
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12  
13 DATED: January 16, 2019

Respectfully submitted,

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Richard S. Zuniga, Esq.

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16 By:

  
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Attorneys for Respondent  
TARLTON AND SON, INC.

**CERTIFICATE OF SERVICE**

I, Richard S. Zuniga, declare as follows:

1. I hereby certify that on January 16, 2019, I filed **RESPONDENT TARLTON AND SON, INC.'S OPPOSITION TO MOTION TO FILE AMICUS CURIAE BRIEF** in Cases 32-CA-119054 and 32-CA-126896, via E-Filing.

2. I hereby certify that on January 16, 2019, I caused to be served true and correct copies of **RESPONDENT TARLTON AND SON, INC.'S OPPOSITION TO MOTION TO FILE AMICUS CURIAE BRIEF** in Cases 32-CA-119054 and 32-CA-126896, by first-class U.S. Mail and by E-Mail on the following parties:

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I hereby certify that the foregoing is true and correct. Executed this 16th day of January, 2019, at Los Angeles, California.

  
Richard S. Zuniga

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